Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 942 of 2002 (S/B)

Shri Jai Narayan Singh Rajput
S/o Shri Bala Deen
R/o, C/o Saket Kumar Lodhi
Assistant Teacher, Government Inter College
Nagdev, Pathald, P.O. Kudiyal Gaon
District-Tehri Garhwal ……. Petitioner

Versus

1. State of Uttaranchal through
Secretary of Education
Government of Uttaranchal
Dehradun.

2. Joint Director, Education Garhwal Division
Pauri Garhwal, Uttaranchal

3. Vijai Raj Sani
S/o Shri Satya Prakash Sani
District-Udham Singh Nagar

4. Chandra Pal Singh
S/o Sachid Singh
Presently Post Assistant Teacher
Primary Vidyalya
Thana-Nelpahari, Post Paharpani
……. Respondents

Mr. S.N. Babulkar, Senior Advocate assisted by
Mr. T.K. Nainwal, learned Counsel for the petitioner.
Mr. P. Maulikhi, Addl. Advocate General for the respondents.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought writ in the nature of mandamus for issuance of letter of appointment to the post of Assistant Teacher (Physical Training Instructor).

2) Brief facts of the case, as narrated in the writ petition, are that the petitioner is an unemployed youth, who belongs to Other Backward Class Category. He has passed B.Sc. with second division and also possesses diploma of Physical Education (copies of certificates from High School onwards- Annexure 1 to 5 to the writ petition). The respondents issued an advertisement dated 18.10.97 in Daily newspaper- Dainik Jagran on 21.10.1997, inviting applications for appointment to the post of Assistant Teachers including that of the Physical Instructors in Government Colleges of Uttaranchal. The petitioner fulfill all the requirements and made an application against the 67 vacant post of the Physical Training Instructor. The selection was to be made on quality point marks, as per the rules. The petitioner's quality point aggregate comes to 42.74 while that of the last candidate selected by the respondents have secured only 38.90 quality point marks. On this the petitioner made representations (copies Annexure- 8 and 9 to the writ petition) but to no avail. Challenging the act of the respondents as arbitrary, illegal and malafide, in not giving appointment to the petitioner, the present writ petition has been filed.

3) On behalf of the respondents no. 1 and 2, a counter affidavit has been filed in which it has been admitted that the petitioner has been considered and selected for the post of Assistant Teacher, L.T. Grade. But in view of the interim order dated 23.12.1999 passed by the Allahabad High Court in writ petition No. 53332 of 1999. Dinesh Chandra and others Vs. State of U.P. and others, the respondents are unable to issue appointment letter to the petitioner. It is also stated in the counter affidavit that following interim order was passed in the said writ petition:-

"Learned Standing Counsel may file counter affidavit within four weeks from today.

List this case on 28.01.2000.

Till next listing, it will be open to the respondents to complete the process of selection on the post of Asstt. Teacher in L.T. Grade in Government Higher Secondary Schools of Garhwal Region, but no appointment shall be made. However, it will be open to the respondents to consider the appointments of the petitioners."

As to the issuance of appointment letter dated 24.05.02 (copy Annexure-10 to the writ petition), the respondents have stated that due to bonafide mistake, on ignorance of the order of restoration of writ petition on 21.05.2002, the said appointment letter has been issued but after having knowledge of restoration of writ petition No. 53332 of 1999 no appointment letters are issued. It is suggested that the petitioner should have joined as intervener in the said writ petition.

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed thereto.

5) The short question for consideration before this Court is whether, the petitioner was wrongly denied the appointment to the post of Assistant Teacher, L.T. Grade (Physical Training Instructor).

6) It is clearly admitted in the counter affidavit that petitioner's case has been considered and he has been selected for the post of Assistant Teacher, L.T. Grade (Physical Training Instructor). The respondents in their counter affidavit have stated that due to the interim order passed in writ petition No.

53332 of 1999, Dinesh Chandra and others Vs. State of U.P. and others, they are unable to issue letter of appointment to the petitioner. From the interim order as quoted above, it is clear that there is direction from the Court, not to make appointments. However, the said interim order shows that it was operative only till the next date of listing of said case. The next date of listing is also clear in the order, which is mentioned as 28th Jan, 2000. It is not clear from the record, if the said order was extended or if the said order is still continuing. Rather, from the counter affidavit, it appears that meanwhile, the writ petition was dismissed in default and later on restored on 21.05.2002.

7) Learned counsel for the petitioner submitted that the respondents have issued an appointment letter dated 24.05.02 to one Shri Rajesh Prasad (copy Annexure-10 to the writ petition). It is further submitted that in the circumstances, the petitioner's appointment cannot be held up. In reply to this learned Additional Advocate General, appearing on behalf of the respondents submitted that they came to know of the restoration order after 25.06.2002 and there after they have not issued even a single appointment letter, as stated by them in Para-10 of the counter affidavit.

8) In the above circumstances, it cannot be said if the petitioner's case for appointment is still required to be considered by the respondents or if they have committed any error in the selection process, as they have admitted that the petitioner has been selected on the basis of quality points obtained by him. However, this Court cannot direct the respondents to commit the contempt of another court seized with the aforesaid writ petition in which interim order was passed. Therefore, this writ petition is disposed of with the observation that the appointment letter shall be issued to the

petitioner if above stay order is no more in operation now or if the same has been vacated. It is further observed herewith that the appointment letter, if any issued to the petitioner shall be subject to the decision of the aforesaid writ petition No. 53332 of 1999, Dinesh Chandra and others Vs. State of U.P. and others (if the same is still pending). No order as to costs.

(Prafulla C. Pant J)

Dt.: November 16, 2004
Sweta